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NOTIFICATION

No. 3422/57/Law (B4).

Dated, Trivandrum, the 24th May 1958.

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the President on the 19th May, 1958.

By order of the Governor,

P. NARAYANASWAMI,
Additional Secretary.

ACT 29 of 1958

THE KERALA COMPENSATION FOR TENANTS IMPROVEMENTS ACT, 1958.

An Act to make provision for payment of compensation for improvements made by tenants in the State of Kerala.

Preamble.—WHEREAS it is necessary to make provision for the payment of compensation for improvements made by tenants in the State of Kerala;

Be it enacted in the Ninth Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Compensation for Tenants Improvements Act, 1958.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "eviction" means the recovery of possession of land from a tenant ;

(b) "improvement" means any work or product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding is let, mortgaged or occupied, but does not include such clearances, embankments, levellings, enclosures, temporary wells and water-channels as are made by the tenant in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to land from the ordinary operations of husbandry ;

(c) "State" means the State of Kerala;

(d) "tenant" with its grammatical variations and cognate expressions includes—

(i) a person who, as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee, or sub-mortgagee of land, is in possession thereof ;

(ii) a person who with the bona fide intention of attorning and paying a reasonable rent to the person entitled to cultivate or let waste-land, but without the permission of such person, brings such land, under cultivation and is in occupation thereof as cultivator; and

(iii) a person who comes into possession of land belonging to another person and makes improvements thereon in the bona fide belief that he is entitled to make such improvements.

3. *What are presumed to be improvements.*—Until the contrary is shown, the following works or the products of such works shall be presumed to be improvements for the purposes of this Act :—

(a) the erection of dwelling houses, buildings appurtenant thereto and farm buildings ;

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes ;

(c) the preparation of land for irrigation ;

(d) the conversion of one-crop into two-crop land ;

(e) the drainage, reclamation from rivers or other waters or protection from floods or from erosion or other damage by water, of land used for agricultural purposes, or of waste-land which is culturable ;

(f) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(g) the renewal or reconstruction of any of the foregoing works or alterations therein or additions thereto; and

(h) the planting or protection and maintenance of fruit trees, timber trees and other useful trees and plants.

4. *Tenant entitled to compensation for improvements.*—(1) Every tenant shall, on eviction, be entitled to compensation for improvements which were made by him, his predecessor-in-interest or by any person not in occupation at the time of the eviction who derived title from either of them and for which compensation had not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy of the payment or tender of the mortgage money or premium, if any, be entitled to remain in possession until eviction in execution of a decree or order of court:

Provided that nothing herein contained shall be construed as affecting the provisions of the Kerala Land Conservancy Act, 1957:

Provided further that this section shall not apply to tenants holding lands under the Government.

(2) A tenant so continuing in possession shall, during such continuance, hold as a tenant subject to the terms of his lease or mortgage, if any.

5. *Decree in eviction to be conditional on payment of compensation.*—(1) In a suit for eviction instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 4 for improvements, the court shall ascertain as provided in sections 7 to 16, the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that on payment by the plaintiff into the court of the amount so found due and also the mortgage money or the premium, as the case may be, the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the court finds any sum of money due by the defendant to the plaintiff for rent, or otherwise in respect of the tenancy, the court shall set off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on eviction the amount, if any, remaining due to the defendant after such set-off:

Provided that the court shall not set off any sum of money due for rent as aforesaid, if such sum is not legally recoverable.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement, for which compensation has been so adjudged, when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of eviction as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent, or otherwise in respect

of the tenancy, shall be determined by order of the court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under subsection (3) shall be deemed to be a question relating to the execution of a decree within the meaning of sub-section (1) of section 47 of the Code of Civil Procedure, 1908.

6. *Tenant's right to remove buildings, works or trees deemed not improvements.*—Whenever a court passes a decree or order for eviction against a tenant and such tenant has erected any building, constructed any work or planted any tree which the court finds is not an improvement for which compensation can be claimed, but which the court finds can be removed without substantial injury to the holdings, such tenant may remove such building, work or tree within a time to be fixed by the court in its decree or order and the court may, from time to time, extend the time so fixed.

7. (1) *Improvement producing an increase in the value of the annual net produce.*—When the improvement is not an improvement to which section 11 applies and has caused an increase in the value of the annual net produce of the holding, the court shall determine, as nearly as may be, the average net money value of such increase and shall award as compensation for the improvement three-fourths of the amount arrived at by capitalising such net money value at 20 times.

Explanation 1.—The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and local taxes.

Explanation 2.—In determining the net money value of the increase, regard shall also be had to the condition of the improvement and probable duration of its effects and the labour and capital required for making such improvement.

(2) Nothing in sub-section (1) shall apply to improvements of the nature of embankments, reclamation and other similar works.

8. *Trees or plants spontaneously grown.*—When the improvement is not an improvement to which sub-section (1) of section 7 applies, but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 4, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realise if sold by public auction to be cut and carried away.

9. *Other kinds of improvements.*—When the improvement is not an improvement to which sub-section (1) of section 7 or section 8 applies, the compensation to be awarded shall be the cost of the labour including supervision thereof and of the materials together with other expenditure, if any, which would at the time of the valuation, be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

10. *Value of improvement to be ascertained in the way most favourable to the tenant.*—Notwithstanding anything contained in sections 7, 8 and 9, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.—(a) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 7 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 8 to be Rs. 10.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 8 to be Rs. 20, but under section 9 to be Rs. 100.

In each case the court shall award the higher amount.

11. *Improvement consisting in protection and maintenance of trees and plants.*—When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 4, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 9.

12. *Power to frame tables of maximum and minimum rates of compensation.* The Government may prepare for the whole or any part of the State tables showing the maximum and minimum rates of compensation to be awarded under this Act for all or any class of improvements and when such tables have been published, the amount awarded as compensation under sections 7, 8, 9 and 10 shall not ordinarily exceed such maximum rates nor shall it in any case be less than such minimum rates.

13. *Power to prepare tables of prices of produce, etc.*—

(1) For the purpose of determining the amount of compensation to be awarded under this Act, the Government may prepare tables for the whole or any part of the State showing all or any of the following matters:—

(a) the price of cocoanuts, arecanuts, pepper and paddy;

(b) the cost of—

(i) cultivating and harvesting a crop of paddy;

(ii) planting, protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree, a mango tree, such other tree as may be notified by the Government from time to time and a pepper vine, until the tree or vine is in bearing;

(iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree, a mango tree, such other tree as may be notified by the Government from time to time and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved :

Provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 14.

14. *Values how ascertained when no table has been prepared or the presumption is rebutted.*—In respect of any product for which no table showing the price has been published and whenever the presumption under section 13 is rebutted, the court shall adopt, as the money value for the purpose of awarding compensation under sub-section (1) of section 7, the average price, as nearly as may be ascertainable in the taluk where the land is situated, for a period of 10 years immediately preceding the institution of the suit.

15. *Tables to be published.*—The tables prepared under this Act shall be published in English, Malayalam, Tamil and Kanarese in the Gazette and shall be kept publicly posted in the civil courts having jurisdiction over the area to which the tables apply.

The Government may, by like publication, cancel or vary, from time to time, the tables so published.

16. *Compensation when area is overplanted.*—When trees are planted in excess of the following scale, the court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may, notwithstanding anything hereinbefore contained, either refuse to grant any compensation or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature:—

Cocoanut trees	100 per acre.
Arecanut trees	720 per acre.
Jack tree	60 per acre.

In the case of a mixed garden, each tree shall be allowed a proportionate fraction of an acre according to the above scale.

17. *Contracts affecting tenant's right to make improvements.*—Nothing in any contract entered into whether before or after the commencement of this Act shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.

Provided that this section—

(i) in its application to the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956, shall not operate against any contract entered into after the commencement of this Act whereby the tenant's right to

make improvements in the nature of buildings or to claim value of improvements therefore has been taken away or limited; and

(ii) in its application to the remaining part of the State shall not operate against any contract whereby the tenant's right to make improvements in the nature of buildings or to claim value of improvements therefore has been taken away or limited.

18. *Repeal.*— The Travancore-Cochin Compensation for Tenants Improvements Act, 1956 and the Malabar Compensation for Tenants Improvements Act, 1899, are hereby repealed.

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